

Message Text

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FM AMEMBASSY BUCHAREST

TO SECSTATE WASHDC IMMEDIATE 1528

C O N F I D E N T I A L SECTION 1 OF 3 BUCHAREST 0321

E.O. 11652: GDS

TAGS: EEWT, RO

SUBJECT: TRADE AGREEMENT NEGOTIATIONS

REF: BUCHAREST 299

1. RE PARA 5 REFTTEL, THERE FOLLOWS TEXT OF THOSE ARTICLES
WHERE SIGNIFICANT CHANGES WERE MADE IN THE LIGHT OF
JANUARY 23 AND 24 DISCUSSIONS WITH MINISTER NICOLAE.
NICOLAE WILL BE SEEKING COUNCIL OF MINISTERS APPROVAL
OF AGREEMENT AS NOW WORKED OUT AS SOON AS WE HAVE
COMPLETED RECONCILIATION OF TEXTS HERE. COMMENTARY
ON CHANGES INVOLVED CONTAINED IN SEPTTEL (BUCHAREST 322).
REQUEST CONCURRENCE TO THESE CHANGES AS
SOON AS POSSIBLE.

2. ARTICLE IV: BUSINESS FACILITATION

1. IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS,
FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF ONE PARTY
MAY OPEN, ESTABLISH AND OPERATE REPRESENTATIONS (AS THESE
TERMS ARE DEFINED IN ANNEX 3) IN THE TERRITORY OF THE OTHER
PARTY. INFORMATION CONCERNING RULES AND REGULATIONS PER-
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TRAINING TO SUCH REPRESENTATIONS AND RELATED FACILITIES

SHALL BE PROVIDED BY EACH PARTY UPON THE REQUEST OF THE OTHER.

2. NATIONALS, FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF EITHER COUNTRY SHALL BE AFFORDED ACCESS TO ALL COURTS AND, WHEN APPLICABLE, TO ADMINISTRATIVE BODIES AS PLAINTIFFS OR DEFENDANTS, OR OTHERWISE, IN ACCORDANCE WITH THE LAWS IN FORCE IN THE TERRITORY OF SUCH OTHER PARTY. THEY SHALL NOT CLAIM OR ENJOY IMMUNITIES FROM SUIT OR EXECUTION OF JUEGEMENT OR OTHER LIABILITY IN THE TERRITORY OF THE OTHER PARTY WITH RESPECT TO COMMERCIAL TRANSACTIONS; THEY ALSO SHALL NOT CLAIM OR ENJOY IMMUNITIES FROM TAXATION WITH RESPECT TO COMMERCIAL TRANSACTIONS, EXCEPT AS MAY BE PROVIDED IN OTHER BILATERAL AGREEMENTS.

3. FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF ONE OF THE PARTIES SHALL BE PERMITTED TO ENGAGE IN THE TERRITORY OF THE OTHER PARTY IN ANY COMMERCIAL ACTIVITY WHICH IS NOT CONTRARY TO THE LAWS OF SUCH OTHER PARTY.

4. FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF EITHER PARTY THAT DESIRE TO ESTABLISH REPRESENTATIONS OR ALREADY OPERATE REPRESENTATIONS IN THE TERRITORY OF THE OTHER PARTY SHALL RECEIVE TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF ANY THIRD COUNTRY IN ALL MATTERS RELATING THERETO. THE RIGHTS AND FACILITIES SET OUT IN ANNEX 2 SHALL BE AMONG THOSE THAT WILL BE ACCORDED SUCH FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS WHICH ESTABLISH REPRESENTATIONS.

5. FOR THE PURPOSE OF CARRYING ON TRADE BETWEEN THE TERRITORIES OF THE TWO PARTIES AND ENGAGING IN RELATED COMMERCIAL ACTIVITIES, NATIONALS OF EACH PARTY AND EMPLOYEES OF ITS FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS AND THEIR FAMILIES SHALL BE PERMITTED TO ENTER, TO RESIDE AND TO OBTAIN APPROPRIATE HOUSING IN THE TERRITORY OF THE OTHER PARTY, AND TO TRAVEL THEREIN FREELY, IN ACCORDANCE WITH THE LAWS RELATING TO ENTRY, STAY AND TRAVEL OF ALIENS.

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6. THE PARTIES AFFIRM THAT NO RESTRICTIONS SHALL EXIST IN PRINCIPLE ON CONTACTS BETWEEN REPRESENTATIVES OF AMERICAN AND ROMANIAN FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS. TO THIS END, NATIONALS, FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF EITHER PARTY SHALL BE PERMITTED WITHIN THE TERRITORY OF THE OTHER PARTY TO DEAL DIRECTLY WITH BUYERS AND USERS OF THEIR PRODUCTS, FOR PURPOSES OF SALES PROMOTION AND SERVICING THEIR PRODUCTS, IN ACCORDANCE WITH THE

PROCEDURES AND REGULATIONS APPLICABLE IN EACH COUNTRY.

7. THE PARTIES SHALL AS APPROPRIATE PERMIT AND FACILITATE ACCESS WITHIN THEIR TERRITORIES BY NATIONALS, FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF THE OTHER PARTY TO INFORMATION CONCERNING MARKETS FOR GOODS AND SERVICES IN ACCORDANCE WITH THE PROCEDURES AND REGULATIONS APPLICABLE IN EACH COUNTRY.

8. FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF EITHER PARTY SHALL BE PERMITTED IN ACCORDANCE WITH PROCEDURES AND REGULATIONS APPLICABLE WITHIN THE TERRITORY OF THE OTHER PARTY TO ADVERTISE, CONCLUDE CONTRACTS, AND PROVIDE TECHNICAL SERVICES TO THE SAME EXTENT THAT FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE LATTER PARTY MAY DO SO. DUTY-FREE TREATMENT WILL BE ACCORDED TO SAMPLES WITHOUT COMMERCIAL VALUE AND ADVERTISING MATERIALS, AS PROVIDED IN THE GENEVA CONVENTION OF NOVEMBER 7, 1952, RELATING TO THE IMPORTATION OF COMMERCIAL SAMPLES AND ADVERTISING MATERIAL.

9. EACH PARTY AGREES TO PROVIDE ITS GOOD OFFICES TO ASSIST IN THE SOLUTION OF BUSINESS FACILITATION PROBLEMS AND IN GAINING ACCESS TO APPROPRIATE GOVERNMENT OFFICIALS IN EACH COUNTRY.

10. EACH PARTY AGREES TO ENCOURAGE THE DEVELOPMENT ON ITS TERRITORY OF APPROPRIATE SERVICES AND FACILITIES AND ADEQUATE ACCESS THERETO TO PROMOTE ALSO THE ACTIVITIES OF FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE OTHER PARTY, WHICH DO NOT HAVE REPRESENTATIONS, AND THEIR EMPLOYEES AND REPRESENTATIVES.

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11. EACH PARTY AGREES TO FACILITATE IN ITS TERRITORY, TO THE FULLEST EXTENT PRACTICABLE, THE ACTIVITIES OF FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE OTHER PARTY ACTING THROUGH EMPLOYEES, TECHNICIANS, EXPERTS, SPECIALISTS AND OTHER REPRESENTATIVES IN CARRYING OUT THEIR CONTRACTS WITH ITS FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS.

12. EACH PARTY UNDERTAKES TO FACILITATE TRAVEL BY TOURISTS AND OTHER VISITORS AND THE DISTRIBUTION OF INFORMATION FOR TOURISTS.

13. THE PARTIES CONFIRM THEIR COMMITMENT, AS EXPRESSED IN THE JOINT STATEMENT ON ECONOMIC, INDUSTRIAL, ANJWTECHNOLOGICAL COOPERATION OF DECEMBER 5, 1973, TO FACILITATE PARTICIPATION OF THEIR NATIONALS, FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS IN FAIRS AND EXHIBITIONS ORGANIZED IN THE OTHER COUNTRY. EACH PARTY FURTHER UNDERTAKES TO ENCOURAGE AND FACILITATE PARTICIPATION BY NATIONALS, FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE OTHER COUNTRY IN TRADE FAIRS AND EXHIBITS IN ITS TERRITORY, AS WELL AS TO FACILITATE TRADE MISSIONS ORGANIZED IN THE OTHER COUNTRY AND SENT BY MUTUAL AGREEMENT OF THE PARTIES. SUBJECT TO THE LAWS IN CONFIDENTIAL

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FORCE WITHIN THEIR TERRITORIES, THE PARTIES AGREE TO ALLOW THE IMPORT AND RE-EXPORT ON A DUTY-FREE BASIS OF ALL ARTICLES FOR USE BY NATIONALS, FIRMS, ECONOMIC ORGANIZATIONS, AND COMPANIES, OF THE OTHER PARTY IN FAIRS AND EXHIBITIONS, PROVIDING THAT SUCH ARTICLES ARE NOT TRANSFERRED.

3. ARTICLE V: INDUSTRIAL PROPERTY, INDUSTRIAL RIGHTS AND PROCESSES, AND COPYRIGHTS, PARA 3. EACH PARTY AGREES TO PROVIDE NATIONALS, FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE OTHER PARTY THE RIGHTS WITH RESPECT TO COPYRIGHTS SET FORTH IN THE UNIVERSAL COPYRIGHT CONVENTION AS REVISED AT PARIS ON JULY 24, 1971.

4. ANNEX 2. BUSINESS FACILITATION

I. NATIONALS, FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF ONE PARTY SHALL ENJOY THE FOLLOWING RIGHTS AND FACILITIES IN CONNECTION WITH THE ESTABLISHMENT AND OPERATION OF

THEIR REPRESENTATIONS IN THE TERRITORY OF THE OTHER PARTY.

1. APPLICATIONS TO ESTABLISH REPRESENTATIONS AND TO OBTAIN ANY NECESSARY AUTHORIZATION SHALL BE HANDLED EXPEDITIOUSLY AND SHALL BE PROCESSED AND ACTED UPON IN ACCORDANCE WITH PROCEDURES AND STANDARDS NO LESS FAVORABLE THAN THOSE ACCORDED TO THE ENTERPRISES OF ANY THIRD COUNTRIES.

2. REVOCATION OR REFUSAL TO RENEW AUTHORIZATION TO OPERATE SUCH REPRESENTATIONS SHALL REQUIRE NOTICE IN WRITING AT LEAST THREE MONTHS PRIOR TO TERMINATION OF RIGHT TO SUCH REPRESENTATION.

3. SUCH REPRESENTATION SHALL CONSIST OF NATURAL OR LEGAL PERSONS AND SHALL BE ESTABLISHED AND OPERATED IN ACCORDANCE WITH PROCEDURES AND REGULATIONS IN THE HOST COUNTRY. TERMINATION OF THE SERVICES OF A COMMERCIAL AGENCY SHALL NOT BE SUBJECT TO ANY PENALTIES WHEN IT DOES NOT CONTRAVENE THE PROVISIONS OF ANY CONTRACT EXISTING BETWEEN THE COMMERCIAL AGENCY AND THE CONTRACTING FIRM.

4. THE PARTIES RECOGNIZE THAT REASONABLE LEVELS AND CONFIDENTIAL

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APPLICATION OF FEES, TAXES, RENTS AND OTHER CHARGES, AND ADEQUATE NOTICE OF CHANGES THEREIN TO THE CONCERNED REPRESENTATIONS AND THEIR EMPLOYEES, ARE BENEFICIAL TO COMMERCE AND COOPERATION BETWEEN THE TWO COUNTRIES.

5. REPRESENTATION OF ONE PARTY SHALL BE PERMITTED TO RENT OFFICE SPACE FOR THEIR REPRESENTATIONS AND HOUSING FOR THE USE OF THEIR EMPLOYEES. THE PARTIES, UPON REQUEST, WILL USE THE GOOD OFFICES AT THEIR DISPOSAL TO FACILITATE AND EXPEDITE THE OBTAINING AND OCCUPYING OF SUCH OFFICE SPACE AND HOUSING.

6. REPRESENTATIONS SHALL BE PERMITTED TO IMPORT, AS PROMPTLY AS DESIRED, OFFICE MACHINES, AUTOMOBILES, AND OTHER EQUIPMENT FOR THE PURPOSE OF EFFICIENT AND BUSINESS-LIKE OPERATION OF THE REPRESENTATION, SUBJECT TO APPLICABLE CUSTOMS REGULATIONS.

7. THE EMPLOYEES OF THE REPRESENTATIONS SHALL BE PERMITTED TO IMPORT PERSONAL EFFECTS INCLUDING FURNITURE AND APPLIANCES. SUCH PERSONAL EFFECTS SHALL BE ENTERED DUTY-FREE IN ACCORDANCE WITH APPLICABLE CUSTOMS REGULATIONS. AUTOMOBILES AND SIMILAR MEANS OF TRANSPORTATION IMPORTED FOR THE USE OF SUCH EMPLOYEES WILL BE PERMITTED TO ENTER IN ACCORDANCE WITH THE APPLICABLE CUSTOMS REGULATIONS.

SUCH EMPLOYEES SHALL ALSO BE PERMITTED TO EXPORT THEIR IMPORTED PERSONAL EFFECTS AND AUTOMOBILES, FREE OF EXPORT DUTIES.

8. REPRESENTATIONS MAY ACQUIRE COMMUNICATIONS FACILITIES, SUCH AS OFFICE OR HOME TELEPHONES FOR THEIR EMPLOYEES, EXTENSIONS, AND TELEX EQUIPMENT, WHICH WILL BE MADE AVAILABLE AS PROMPTLY AS POSSIBLE UPON APPLICATION THEREFOR, IN ACCORDANCE WITH APPLICABLE LAW.

9. THE TERM "EMPLOYEES" USED IN PARAGRAPH 4, 5, 7 AND 8 REFERS TO PERSONS SENT BY FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF ONE PARTY TO PERFORM SERVICES FOR THEIR REPRESENTATIONS WHICH ARE FUNCTIONING IN THE TERRITORY OF THE OTHER PARTY.

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10. REPRESENTATIONS MAY, SUBJECT TO THE APPLICABLE LAWS AND PROCEDURES, SELECT AND EMPLOY ANY PERSON, REGARDLESS OF CITIZENSHIP, LAWFULLY RESIDING IN OR ADMITTED TO THE TERRITORY OF SUCH OTHER PARTY. NEITHER PARTY SHALL IMPOSE RESTRICTIONS ON THE TERMINATION OF EMPLOYEES, OTHER THAN THE CONTRACTUAL PROVISIONS REQUIRING NOTICE

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AND COMPENSATION. NEITHER PARTY SHALL RESTRICT THE TOTAL NUMBER OF PERSONS TO BE EMPLOYED AS LONG AS THEY ARE REASONABLY NEEDED FOR THE CONDUCT OF BUSINESS. REPRESENTATIONS SHALL HIRE, COMPENSATE, AND TERMINATE THE EMPLOYMENT OF EMPLOYEES IN ACCORDANCE WITH THE PROVISIONS OF CONTRACTS GOVERNING THEIR EMPLOYMENT. EACH PARTY AGREES TO ENCOURAGE THE NEGOTIATION OF CONTRACTS IN SUCH A WAY THAT THE REPRESENTATIONS OF THE OTHER PARTY SHALL HAVE THE BROADEST POSSIBLE FLEXIBILITY IN SELECTING, HIRING AND COMPENSATING EMPLOYEES AND IN TERMINATING THEIR EMPLOYMENT.

11. EACH PARTY AGREES TO FACILITATE TO THE MAXIMUM EXTENT POSSIBLE THE TRAVEL OF PERSONS EMPLOYED BY REPRESENTATIONS OF THE OTHER PARTY DESIRING TO ENTER ITS TERRITORY IN FURTHERANCE OF THE PURPOSES M THIS AGREEMENT, AND TO MEMBERS OF THEIR IMMEDIATE FAMILIES. EACH PARTY AGREES TO MAKE AVAILABLE MULTIPLE ENTRY VISAS OF DURATION 6 MONTHS OR LONGER TO SUCH PERSONS AND TO MEMBERS OF THEIR IMMEDIATE FAMILIES. PERSONS WHO ARE EMPLOYEES OF REPRESENTATIONS OF THE OTHER PARTH SHALL BE PERMITTED TO THE MAXIMUM EXTENT POSSIBLE, IN ACCORDANCE
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WITH APPLICABLE REGULATIONS, TO TRAVEL ABROAD FOR PURPOSES RELATED TO THE BUSINESS OF THE REPRESENTATIONS BY WHICH THEY ARE EMPLOYED.

II. FOR THE PURPOSE OF APPLYING PARAGRAPH 10 OF ARTICLE IV, THE PARTIES REGONIZE THAT REASONABLE LEVELS AND APPLICATION OF FEES, RENTS, AND OTHER CHARGES AND ADEQUATE NOTICE OF CHANGES THEREIN TO THE CONCERNED EMPLOYEES AND REPRESENTATIVES, ARE BENEFICIAL TO COMMERCE AND COOPERATION BETWEEN THE TWO PARTIES.

III. FOR THE PURPOSE OF APPLYING PARAGRAPH 11 OF ARTICLE IV, EACH PARTY UNDERTAKES TO ASSURE THE PERSONS REFERRED TO THEREIN ACCESS TO ADEQUATE HOUSING AND OFFICE SPACE AND COMMUNICATION FACILITIES, AND THE ABILITY TO UTILIZE LOCAL PERSONNEL NECESSARY FOR THE CARRYING OUT OF THEIR NORMAL ACTIVITIES. IN ADDITION, IN ACCORDANCE WITH APPLICABLE CUSTOMS REGULATIONS, THE PARTIES WILL PERMIT THE IMPORT OF TOOLS, EQUIPMENT AND AUTOMOBILES REQUIRED FOR CARRYING OUT CONTRACTS, AS WELL AS, ON A DUTY-FREE

BASIS, IMPORTS OF PERSONAL EFFECTS. THE PARTIES WILL PERMIT DUTY-FREE EXPORT OF IMPORTED PERSONAL EFFECTS AND AUTOMOBILES. EACH PARTY AGREES TO FACILITATE TO THE MAXIMUM EXTENT POSSIBLE TRAVEL OF SUCH PERSONS AND THE MEMBERS OF THEIR IMMEDIATE FAMILIES DESIRING TO ENTER AND LEAVE ITS TERRITORY.

5. ANNEX 3: DEFINITIONS

1. IN THIS AGREEMENT "FIRMS," "COMPANIES," AND "ECONOMIC ORGANIZATIONS," FOR THE UNITED STATES OF AMERICA, SHALL INCLUDE CORPORATIONS, PARTNERSHIPS, SOLE PROPRIETORSHIPS, COMPANIES AND OTHER ECONOMIC ASSOCIATIONS CONSTITUTED UNDER THE LAWS AND REGULATIONS APPLICABLE IN THE TERRITORY OF THE UNITED STATES OF AMERICA, AND "FIRMS", "COMPANIES" AND "ECONOMIC ORGANIZATIONS," FOR THE SOCIALIST REPUBLIC OF ROMANIA SHALL INCLUDE STATE ENTERPRISES, INDUSTRIAL CENTRALS, ENTERPRISES WITH THE STATUS OF CENTRALS AND OTHER ENTERPRISES WHICH CARRY OUT FOREIGN TRADE ACTIVITIES IN ACCORDANCE WITH ROMANIAN LAWS.

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2. IN THIS AGREEMENT "REPRESENTATION," IN THE CASE OF THE REPRESENTATIONS ESTABLISHED IN THE UNITED STATES OF AMERICA, SHALL INCLUDE SUBSIDIARIES OR UNINCORPORATED BARNCHEs, OR OTHER FORMS OF BUSINESS ORGANIZATION LEAGALLY CONSTITUTED UNDER THE LAWS AND REGULATIONS APPLICABLE IN THE TERRITORY OF THE UNITED STATES OF AMERICA BY FIRMS, COMPANIES, OR ECONOMIC ORGANIZATIONS OF THE SOCIALIST REPUBLIC OF ROMANIA, AND IN THE CASE OF THE REPRESENTATIONS ESTABLISHED IN THE SOCIALIST REPUBLIC OF ROMANIA, SHALL INCLUDE THE AGENCIES REFERRED TO IN ARTICLE 1 OF DECREE OF THE STATE COUNCIL OF THE SOCIALIST REPUBLIC OF ROMANIA NO. 15 OF JANUARY 25, 1971, ESTABLISHED BY A FIRM, COMPANY OR ECONOMIC ORGANIZATION OF THE UNITED STATES OF AMERICA.

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